

1 **WAJDA LAW GROUP, APC**
2 Nicholas M. Wajda (State Bar No. 259178)
3 6167 Bristol Parkway
4 Suite 200
5 Culver City, California 90230
6 Telephone: 310-997-0471
7 Facsimile: 866-286-8433
8 E-Mail: nick@wajdalawgroup.com
9 *Attorney for the Plaintiff*

10

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 ANN HICKS WAGNER,
14 Plaintiff,
15 v.
16 SEQUIUM ASSET SOLUTIONS, LLC,
17 Defendant.

18 Case No.

19 **COMPLAINT FOR DAMAGES**

20

21 **1. VIOLATION OF THE FAIR DEBT
2. VIOLATION OF THE TELEPHONE
3. VIOLATION OF THE ROSENTHAL FAIR
COLLECTION PRACTICES ACT, 15 U.S.C.
CONSUMER PROTECTION ACT, 47 U.S.C.
§1692 ET SEQ.
§227 ET SEQ.
CAL. CIV. CODE §1788 ET SEQ.**

22

23

24

25

26

27

28

29 **DEMAND FOR JURY TRIAL**

30 **COMPLAINT**

31 NOW comes ANN HICKS WAGNER (“Plaintiff”), by and through her attorneys, WAJDA
32 LAW GROUP, APC (“Wajda”), complaining as to the conduct of SEQUIUM ASSET
33 SOLUTIONS, LLC (“Defendant”), as follows:

34 **NATURE OF THE ACTION**

35 1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act
36 (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, the Telephone Consumer Protection Act (“TCPA”)

1 under 47 U.S.C. §227 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”)
2 pursuant to Cal. Civ. Code §1788 *et seq.*, for Defendant’s unlawful conduct.

3 **JURISDICTION AND VENUE**

4 2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter
5 jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C §227, 28 U.S.C. §§1331 and
6 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for
7 the state law claim pursuant to 28 U.S.C. §1367 because it arises out of the common nucleus of
8 operative facts of Plaintiff’s federal questions claims.

9 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business
10 in the Eastern District of California and a substantial portion the events or omissions giving rise to
11 the claims occurred within the Eastern District of California.

12 **PARTIES**

13 4. Plaintiff is a consumer over-the-age of 18 residing within the Eastern District of California.

14 5. Plaintiff is a “person,” as defined by 47 U.S.C. §153(39).

15 6. Defendant is a limited liability company organized and existing under the laws of Georgia
16 and has its principal place of business located at 1130 Northchase Parkway SE, Suite 150, Marietta,
17 Georgia 30067. Defendant regularly collects upon consumers located within the State of California.

18 7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

19 8. Defendant acted through its agents, employees, officers, members, directors, heirs,
20 successors, assigns, principals, trustees, sureties, subrogees, third-party contractors, representatives
21 and insurers at all times relevant to the instant action.

22 **FACTS SUPPORTING CAUSES OF ACTION**

1 9. The instant action arises out of the nature of Defendant's attempt to collect on a purported
2 defaulted service bill ("subject debt") that Plaintiff allegedly owed to AT&T.

3 10. Around April 2020, Plaintiff began receiving collection calls to her cellular telephone
4 number, (707) XXX-9020, from Defendant.

5 11. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and
6 operator of the cellular phone ending in -9020. Plaintiff is and always has been financially
7 responsible for the cellular phone and its services.

8 12. Defendant has called Plaintiff using various phone numbers, including but not limited to
9 (707) 615-0077, (707) 755-8868, (707) 755-8838, and (707) 755-8808.

10 13. Upon information and belief, the above-referenced phone numbers are regularly utilized by
11 Defendant during its debt collection activities.

12 14. Upon answering phone calls from Defendant, Plaintiff has experienced a significant pause,
13 lasting several seconds in length, before being connected with a live representative.

14 15. Plaintiff, through her contacts with Defendant, was informed that Defendant was acting as
15 a debt collector attempting to collect upon the subject debt.

16 16. Upon speaking to Defendant, Plaintiff informed Defendant that she did not believe that she
17 owed the subject and requested that Defendant cease contacting her.

18 17. Defendant willfully ignored Plaintiff's request and continued placing phone calls to
19 Plaintiff's cellular phone seeking payment on subject debt.

20 18. Despite Plaintiff's efforts, Defendant has continued to regularly call her cellular phone up
21 until the filing of this lawsuit.

22 19. Plaintiff has received not less than 25 phone calls from Defendant since asking it to stop
23 calling.

1 20. Frustrated and concerned over Defendant's conduct, Plaintiff spoke with Wajda regarding
2 her rights, resulting in exhausting time and resources.

3 21. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

4 22. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not
5 limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional
6 distress, increased risk of personal injury resulting from the distraction caused by the never-ending
7 calls, increased usage of her telephone services, loss of cellular phone capacity, diminished cellular
8 phone functionality, decreased battery life on her cellular phone, and diminished space for data
9 storage on her cellular phone.

11 **COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

12 23. Plaintiff repeats and realleges paragraphs 1 through 21 as though full set forth herein.

14 24. Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3) of the FDCPA.

15 25. Defendant is a “debt collector” as defined by §1692a(6) of the FDCPA, because it regularly
16 use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

17 26. Defendant identifies itself as a debt collector, and is engaged in the business of collecting
18 or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed
19 or due to others. Defendant has been a member of the Association of Credit and Collection
20 Professionals, an association of debt collectors, since 2009.¹

22 27. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction
23 due or asserted to be owed or due to another for personal, family, or household purposes.

24 **a. Violations of FDCPA §1692c(a)(1) and §1692d**

25 28. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in
26 any conduct the natural consequence of which is to harass, oppress, or abuse any person in

28 ¹ <https://www.acainternational.org/search#memberdirectory>

1 connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring
2 or engaging any person in telephone conversation repeatedly or continuously with intent to annoy,
3 abuse, or harass any person at the called number.”

4 29. Defendant violated §1692c(a)(1), d, and d(5) when it repeatedly called Plaintiff after being
5 notified to stop. Defendant called Plaintiff numerous times after she demanded that it stop calling.
6 This repeated behavior of systematically calling Plaintiff’s cellular phone in spite of Plaintiff’s
7 demands was harassing and abusive. The frequency and nature of calls shows that Defendant
8 willfully ignored Plaintiff’s pleas with the goal of annoying and harassing her.

9 30. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant
10 knew that its conduct was inconvenient and harassing to Plaintiff.

11 **b. Violations of FDCPA § 1692e**

12 31. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false,
13 deceptive, or misleading representation or means in connection with the collection of any debt.”

14 32. In addition, this section enumerates specific violations, such as:

15 “The use of any false representation or deceptive means to collect or attempt to
16 collect any debt or to obtain information concerning a consumer.” 15 U.S.C.
17 §1692e(10).

18 33. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt
19 to collect the subject debt. In spite of the fact that Plaintiff demanded that it stop contacting her,
20 Defendant continued to contact Plaintiff. Instead of putting an end to this harassing behavior,
21 Defendant systematically placed calls to Plaintiff’s cellular phone in a deceptive attempt to force
22 her to answer its calls and ultimately make a payment. Through its conduct, Defendant
23 misleadingly represented to Plaintiff that it had the legal ability to contact her when it no longer
24 had consent to do so.

25 **c. Violations of FDCPA § 1692f**

34. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

35. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on the subject debt by continuously calling Plaintiff numerous times after being notified to stop. Attempting to coerce Plaintiff into payment by placing voluminous phone calls without her permission is unfair and unconscionable behavior. These means employed by Defendant only served to worry and confuse Plaintiff.

36. As pled in paragraphs 20 through 22, Plaintiff has been harmed and suffered damages as a result of Defendant's illegal actions.

WHEREFORE, Plaintiff, ANN HICKS WAGNER, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3);
- e. Enjoining Defendant from further contacting Plaintiffs seeking payment of the subject debt; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

37. Plaintiff repeats and realleges paragraphs 1 through 36 as though fully set forth herein.
38. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) or pre-recorded messages

1 without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment
2 which has the capacity...to store or produce telephone numbers to be called, using a random or
3 sequential number generator; and to dial such numbers.”

4 39. Defendant used an ATDS in connection with its communications directed towards
5 Plaintiff’s cellular phone. The significant pause, lasting several seconds in length, which Plaintiff
6 has experienced during answered calls, is instructive that an ATDS was being utilized to generate
7 the phone calls. Additionally, Defendant continuing to contact Plaintiff after she demanded that the
8 phone calls stop further demonstrates Defendant’s use of an ATDS. Moreover, the nature and
9 frequency of Defendant’s contacts points to the involvement of an ATDS.

10 40. Upon information and belief, the system employed by Defendant to place phone calls to
11 Plaintiff’s cellular phone has the *capacity* – (A) to store or produce telephone numbers to be called,
12 using a random or sequential number generator; and (B) to dial such numbers.

13 41. Defendant violated the TCPA by placing at least 25 phone calls to Plaintiff’s cellular phone
14 using an ATDS without her consent. Any consent that Plaintiff *may* have given to the originator of
15 the subject debt, which Defendant will likely assert transferred down, was specifically revoked by
16 Plaintiff’s demands that it cease contacting her.

17 42. The calls placed by Defendant to Plaintiff were regarding collection activity and not for
18 emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

19 43. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for
20 at least \$500.00 per call. Moreover, Defendant’s willful and knowing violations of the TCPA
21 should trigger this Honorable Court’s ability to triple the damages to which Plaintiff is otherwise
22 entitled to under 47 U.S.C. § 227(b)(3)(C).

23 WHEREFORE, Plaintiff, ANN HICKS WAGNER, respectfully requests that this Honorable
24 Court enter judgment in her favor as follows:
25
26
27
28

- 1 a. Declaring that the practices complained of herein are unlawful and violate the
2 aforementioned statutes and regulations;
- 3 b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages
4 pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- 5 c. Awarding Plaintiff costs and reasonable attorney fees;
- 6 d. Enjoining Defendant from further contacting Plaintiffs seeking payment of the subject
7 debt; and
- 8 e. Awarding any other relief as this Honorable Court deems just and appropriate.

9 **COUNT III – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

- 10 44. Plaintiff restates and realleges paragraphs 1 through 43 as though fully set forth herein.
- 11 45. Plaintiff is a “person[s]” as defined by Cal. Civ. Code § 1788.2(g).
- 12 46. The subject debt is a “debt” and “consumer debt” as defined by Cal. Civ. Code § 1788.2(d)
13 and (f).
- 14 47. Defendant is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

15 **a. Violations of RFDCPA § 1788.10 – 1788.17**

- 16 48. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that “Notwithstanding any other
17 provision of this title, every debt collector collecting or attempting to collect a consumer debt shall
18 comply with the provisions of Section 1692b to 1692j, inclusive of, and shall be subject to the
19 remedies in Section 1692k of, Title 15 of the United States Code.”

- 20 49. As outlined above, through its continuous attempts to collect upon the subject debt,
21 Defendant violated 1788.17; and §§1692d, e, and f. Defendant engaged in a harassing, deceptive
22 and unconscionable campaign to collect from Plaintiff through the implicit misrepresentations
23 made on phone calls placed to Plaintiff’s cellular phone. Through its conduct, Defendant
24 misleadingly represented to Plaintiff that it had the lawful ability to continue contacting her cellular
25 phone. Plaintiff is entitled to damages, attorney fees, and costs for Defendant’s violation of
26 1788.17.

1 phone absent her consent. Such lawful ability was revoked upon Plaintiff demanding that Defendant
2 stop calling her cellular phone, illustrating the deceptive nature of Defendant's conduct. Moreover,
3 Defendant's actions were deceptive and unfair as it continuously led Plaintiff to believe that it had
4 the lawful authority to call Plaintiff.

5 50. Defendant willfully and knowingly violated the RFDCPA through its egregious collection
6 efforts. Defendant's willful and knowing violations of the RFDCPA should trigger this Honorable
7 Court's ability to award Plaintiff statutory damages of up to \$1,000.00, as provided under Cal. Civ.
8 Code § 1788.30(b).

9 51. WHEREFORE, Plaintiff, ANN HICKS WAGNER, respectfully requests that this
10 Honorable Court enter judgment in her favor as follows:

- 11 a. Declare that the practices complained of herein are unlawful and violate the aforementioned
12 statute;
- 13 b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);
- 14 c. Award Plaintiff statutory damages up to \$1,000.00, pursuant to Cal. Civ. Code §
15 1788.30(b);
- 16 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code
17 § 1788.30(c);
- 18 e. Enjoining Defendant from further contacting Plaintiffs seeking payment of the subject debt;
19 and
- 20 f. Award any other relief as the Honorable Court deems just and proper.

21 Dated: June 30, 2020

22 Respectfully submitted,

23
24 Nicholas M. Wajda
25 **WAJDA LAW GROUP, APC**
26 6167 Bristol Parkway
27 Suite 200
28 Culver City, California 90230
Telephone: 310-997-0471
Facsimile: 866-286-8433
E-mail: nick@wajdalawgroup.com